STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SYNTHIA ANN THOMS and DAMIEN RAY THOMS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

FREDERICK MURL THOMS III, and AMY LUCILLE MILLER,

Respondents-Appellants.

UNPUBLISHED
December 10, 1999

No. 217524
Branch Circuit Court
Family Division
LC No. 98-000845 NA

Before: Zahra, P.J., and Kelly and McDonald, JJ.

PER CURIAM.

Respondents appeal as of right from the family court order terminating their parental rights to the minor children under MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b)(3)(g) and (j). We affirm.

Respondents argue that their trial counsel was ineffective for failing to produce any evidence to show that termination of their parental rights was clearly not in the children's best interests. In analyzing claims of ineffective assistance of counsel at termination hearings, we apply by analogy the principles of ineffective assistance of counsel as developed in the criminal law context. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Respondents did not move for a new trial or an evidentiary hearing on this issue in the trial court. Failure to so move precludes appellate review unless the record contains sufficient detail to support respondents' claims, and, if so, review is limited to the record. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996).

To establish a claim of ineffective assistance of counsel, respondents must show that counsel's performance fell below an objective standard of reasonableness and that the representation prejudiced respondents so as to deny them a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). In order to show that counsel's performance was deficient, respondents must overcome the

strong presumption that counsel's assistance constituted sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). To demonstrate prejudice, respondents must show that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.* at 687-688; *People v Shively*, 230 Mich App 626, 628; 584 NW2d 740 (1998).

In *People v Bass (On Rehearing)*, 223 Mich App 241, 252-253; 565 NW2d 897 (1997), vacated in part on other grounds 457 Mich 866 (1998), we stated that

> [i]neffective assistance of counsel can take the form of a failure to call witnesses or present other evidence only if the failure deprives the defendant of a substantial defense. A defense is substantial if it might have made a difference in the outcome of the trial. Decisions concerning which witnesses to call, what evidence to present, or the questioning of witnesses are considered part of trial strategy. In order to overcome the presumption of sound trial strategy, the defendant must show that his counsel's failure to prepare for trial resulted in counsel's ignorance of, and hence failure to present, valuable evidence that would have substantially benefited the defendant. This Court will not second-guess defense counsel's trial strategy. [Citations omitted.]

Respondents are correct that once the trial court finds at least one statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds that doing so is clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Although respondents' counsel did not present any testimony or evidence on their behalf, he thoroughly cross-examined appellee's witnesses about respondents' progress during the proceedings. Contrary to respondents' argument, the witnesses testified that respondents made little progress despite the services provided to them and failed to rectify the conditions that brought the children into care. Furthermore, respondents have not identified any specific evidence that allegedly would have shown that termination of their parental rights was clearly not in the children's best interests, nor is the existence of any such evidence apparent from the record. Accordingly, respondents have not shown that they were deprived of the effective assistance of counsel because of counsel's failure to call witnesses or present other evidence.

Respondents also argue that counsel should have acknowledged the apparent conflict of interest in representing both respondents because they lived apart and he could not argue for the return of the children to both of them. Although there was testimony that respondents had problems with their relationship and that Amy moved in and out of their home several times during the proceedings, the family court was aware that it could place the children with either or both respondents, given respondents more time to demonstrate their parenting skills, or terminate their parental rights. Moreover, respondents' counsel did not place respondents in a position where they were fighting against one another for custody of the children and argued in his closing argument that the children should be returned to both respondents, that respondents should be provided more services, or that the children should be placed with relatives. Therefore, counsel's representation of both respondents did not create a conflict of interest.

Respondents argue that petitioner failed to present clear and convincing evidence to justify terminating their parental rights and that termination was not in the best interests of the children. The trial court terminated respondents' parental rights under two statutory subsections, namely § 19b(3)(g) and § 19b(3)(j). Only one statutory ground is required to terminate parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). In their brief, respondents argue that termination was not warranted under § 19b(3)(g), but they do not address the applicability of § 19b(3)(j), an issue that must necessarily be decided. The failure to brief the merits of an allegation of error is deemed abandonment of an issue. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998). In any event, a review of the record indicates that the trial court did not clearly err in finding that both statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, as alluded to previously, respondents failed to show that termination of their parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, *supra* at 472-473. Thus, the trial court did not err in terminating respondents' parental rights to the children. *Id.*

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Kelly
/s/ Gary R. McDonald